



61
Atty. Docket No.: 25436/1340

1636
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Carstens, Carsten-Peter
Serial No.: 09/492,590
Filed: January 27, 2000
Entitled: Methods and Compositions for High
Level Expression of Heterologous
Protein with Poor Codon Usage

Examiner: G. Leffers, Jr.

Group Art Unit: 1636

Conf. No.: 1053

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8

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TRANSMITTAL LETTER

Enclosed for filing the above-identified patent application, please find the following documents:

1. Statement of Substance of Examiner Interview; and
2. Return Post Card.

The Commissioner for Patents is hereby authorized to charge any additional fees or credit any overpayment in the total fees to Deposit Account No. 16-0085, Reference 25436/1340. A duplicate of this transmittal letter is enclosed for this purpose.

Respectfully submitted,

Date: September 10, 2003

Name: Kathleen Williams

Registration No.: 34,380

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STATEMENT OF SUBSTANCE OF EXAMINER INTERVIEW

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Sir:

This is filed in response to the Interview Summary mailed August 11, 2003 in the above-noted U.S. patent application.

A telephonic Examiner interview was conducted on July 30, 2003, by Applicants representatives Kathleen Williams and Mark FitzGerald with Examiners Gerald G. Leffers Jr. and George Elliott. U.S.P.T.O. interns Robin Walker and Mathew Fedowitz sat in on the interview.

Discussed during the interview was the issue of commercial success as a secondary consideration of non-obviousness. In particular, the Examiners and Applicants' representatives discussed the relevance of the significantly greater sales of a commercial embodiment of cells according to the claimed invention that comprise an array of three tRNA genes that correspond to rarely used codons, relative to the sales of the assignee's cell product comprising only two

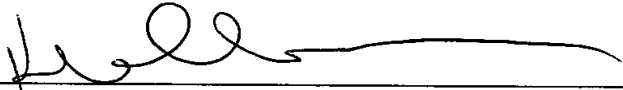
Serial No.: 09/492,590

rare-codon tRNA genes. These relative sales figures were discussed in Applicant's response to the last Office Action (filed June 18, 2003).

The Examiners acknowledged that there is no hard and fast rule for the degree of commercial success necessary to overcome an obviousness rejection, but maintained their position that the degree of success demonstrated is not sufficient to overcome the del Tito reference.

Respectfully submitted,

Dated: September 18, 2003



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